International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Concluding observations on the report submitted by Lithuania under article 29 (1) of the Convention*

1. The Committee on Enforced Disappearances considered the report submitted by Lithuania under article 29 (1) of the Convention (CED/C/LTU/1) at its 219th and 220th meetings (see CED/C/SR.219 and 220), held on 4 and 5 September 2017. At its 231st meeting, held on 12 September 2017, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the timely submission of the report by Lithuania under article 29 (1) of the Convention, which was prepared in accordance with the reporting guidelines, and the information contained therein. The Committee appreciates the frank and constructive dialogue held with the high-level delegation of the State party on the measures taken to implement the provisions of the Convention, which dispelled many of its concerns, and particularly welcomes the competence, rigour and openness with which the delegation responded to the questions raised.

3. The Committee also thanks the State party for its written replies (CED/C/LTU/Q/1/Add.1) to the list of issues (CED/C/LTU/Q/1) and for the additional information provided in writing.

B. Positive aspects

4. The Committee commends the State party for having ratified almost all of the United Nations core human rights instruments and their optional protocols, as well as the Rome Statute of the International Criminal Court.

5. The Committee welcomes the fact that the State party has recognized the competence of the Committee, under articles 31 and 32 of the Convention, in respect of individual and inter-State communications.

6. The Committee also commends the State party on the measures adopted in areas related to the Convention, including:

(a) The adoption of Law No. XII-776 of 13 March 2014, which supplements the Criminal Code by introducing into it the offence of enforced disappearance under article 100 (1), which is mostly in line with the Convention;

(b) The accreditation by the Global Alliance of National Human Rights Institutions of the Seimas Ombudsmen's Office as a national human rights institution with "A" status, in March 2017;

* Adopted by the Committee at its thirteenth session (4-15 September 2017).

(c) The adoption of amendments to the Law on the Seimas Ombudsmen in December 2013 to designate the Seimas Ombudsmen's Office as the national mechanism to prevent torture and other cruel, inhuman or degrading treatment or punishment.

7. The Committee appreciates the fact that the crime of enforced disappearance is not subject to a statute of limitations under article 95 of the Criminal Code.

8. The Committee observes that, by virtue of article 138 of the Constitution, ratified international treaties shall be applied directly.

9. The Committee notes with satisfaction that the State party has extended an open invitation to all special procedure mandate holders of the Human Rights Council to visit the country.

C. Principal subjects of concern and recommendations

10. The Committee considers that, at the time of the adoption of the present concluding observations, the legislation in force in the State party to prevent and punish enforced disappearances was not fully in compliance with certain obligations incumbent on the States that have ratified the Convention. The Committee encourages the State party to implement its recommendations, which have been made in a constructive and helpful spirit, with the aim of ensuring that the existing legal framework, and the way that it is implemented by State authorities, is fully consistent with the rights and obligations contained in the Convention.

Definition and criminalization of enforced disappearance (arts. 1-7)

Definition of enforced disappearance

11. While welcoming the introduction in the Criminal Code of article 100 (1) criminalizing enforced disappearance, the Committee remains concerned about the fact that "arrest" is not mentioned in the definition of this crime, given the information provided by the delegation during the dialogue that the reason for this omission relates to the fact that "arrest" refers to a short-term deprivation of liberty. The Committee is concerned that this omission could restrict the applicability of the definition of enforced disappearances in cases where this crime lasts for a short time.

12. **The Committee recommends that the State party take all measures necessary to ensure that the definition of enforced disappearance in national legislation is fully in line with the definition provided in article 2 of the Convention.**

Criminal responsibility of superiors

13. The Committee takes note of the State party's position that existing regulations in national law are sufficient to address the criminal responsibility of superiors, and that the State party has chosen not to take any additional measures to expressly incorporate into national law the criminal responsibility of superiors as set out in article 6 (1) (b) of the Convention. In this respect, the Committee notes that article 113-1 of the Criminal Code, on negligent performance of commanders' duties, does not include all the elements covered in article 6 (1) (b) of the Convention relating to the criminal responsibility of superiors (art. 6).

14. **The Committee recommends that the State party take the legislative measures necessary to ensure that national law specifically provides for the criminal responsibility of superiors in accordance with article 6 (1) (b) of the Convention to include the responsibility of a superior who:**

(a) **Knew, or consciously disregarded, information which clearly indicated that subordinates under his or her effective authority and control were committing or about to commit a crime of enforced disappearance;**

(b) **Exercised effective responsibility for and control over activities which were concerned with the crime of enforced disappearance;**

(c) **Failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution.**

Appropriate penalties and aggravating and mitigating circumstances

15. The Committee takes note of the information provided by the State party in relation to the minimum and maximum penalties for the crime of enforced disappearance (3 to 15 years of imprisonment) and their applicability when the crime of enforced disappearance concurs with other crimes. It notes that articles 59 (mitigating circumstances) and 60 (aggravating circumstances) of the Criminal Code are applicable to all crimes. The Committee also takes note of the information provided by the State party with respect to article 62 of the Criminal Code to allow courts to impose a more lenient penalty than prescribed in the law, and that this article is only applied in exceptional circumstances. However, the Committee remains concerned that national legislation does not fully address the different aspects associated with the seriousness of the crime of enforced disappearance in respect of the penalties applicable for this crime (art. 7).

16. **The Committee encourages the State party:**

(a) **To ensure that penalties for the crime of enforced disappearance take due account of the extreme seriousness of the offence in accordance with article 7 of the Convention, respecting the minimum penalty;**

(b) **To establish specific aggravating and mitigating circumstances provided for in article 7 (2) of the Convention for the crime of enforced disappearance.**

Criminal responsibility and judicial cooperation in relation to enforced disappearance (arts. 8-15)

Prevention of acts that hinder the progress of investigations

17. The Committee takes note of the information provided by the State party on article 155 of the Criminal Procedure Code, which gives the prosecutor, with the authorization of a judge, the right to access private and public institutions and to access information held in those institutions that could be relevant to a pretrial investigation. However, the Committee remains concerned that restrictions may apply to the prosecutor's right to access information, in particular information that constitutes a State or official secret and that may be relevant to an investigation into an enforced disappearance (art. 12).

18. **The Committee recommends that the State party guarantee that authorities in charge of an investigation into an enforced disappearance have access to all information and documentation relevant to their investigation.**

Measures to prevent enforced disappearances (arts. 16-23)

Expulsion, return, surrender and extradition mechanisms

19. The Committee notes the information provided by the State party on the mechanisms and criteria applied for procedures of expulsion, return, surrender and extradition. However, the Committee also notes that no specific reference is made under national law to enforced disappearance. The Committee further notes that there are no clear and specific criteria and/or procedures to assess and verify the risk of a person to be subjected to enforced disappearance in the country of destination (art. 16).

20. **The Committee recommends that the State party consider explicitly incorporating into its national legislation a prohibition on carrying out an expulsion, return, surrender or extradition where there are substantial grounds for believing that the person would be in danger of being subjected to enforced disappearance. The Committee encourages the State party to take any measures necessary to ensure that**

there are clear and specific criteria and/or procedures to assess and verify the risk of a person being subjected to enforced disappearance in the country of destination.

Investigations in the context of secret detention

21. The Committee takes note of the information provided by the State party that the Prosecutor-General's Office initiated, on 13 February 2014, pretrial investigation No. 01-2-00015-14 in relation to unlawful transportation of persons across the State border (article 292, paragraph 3, of the Criminal Code), that it reopened, on 22 January 2015, pretrial investigation No. 01-2-00016-10 in relation to abuse of office (article 228, paragraph 1, of the Criminal Code), and that it joined both pretrial investigations on 6 February 2015 into a single pretrial investigation, No. 01-2-00015-14. However, the Committee is concerned that joint pretrial investigation No. 01-2-00015-14 has not been completed yet, that no suspects have been identified and that no notifications of suspicions have been served on any persons. The Committee also notes with concern that, in the aforementioned pretrial investigation, no persons have been recognized as victims, thereby denying the right of victims to redress and reparation. In addition, the Committee is concerned that detailed information on the progress of the pretrial investigation and the results of this investigation are being kept secret (arts. 1, 17 and 24).

22. **While welcoming the ongoing investigations into allegations of the State party's involvement in the rendition and secret detention programmes, the Committee, reiterating the recommendations made by the Committee against Torture in 2014 (see CAT/C/LTU/CO/3, para. 16) and the Human Rights Committee in 2012 (see CCPR/C/LTU/CO/3, para. 9):**

(a) **Urges the State party to complete the investigation into allegations of its involvement in the rendition and secret detention programmes within a reasonable time, that those responsible be held accountable, and that victims be duly recognized and provided with appropriate redress and reparation;**

(b) **Recommends that the State party inform the public and ensure that its investigation process is transparent;**

(c) **Requests the State party to provide it with updated information on the findings of such investigation and, if appropriate, sanctions for those responsible.**

Fundamental legal safeguards

23. The Committee takes note of the information provided by the State party that there are no restrictions with regard to access to a lawyer by persons deprived of liberty, and the assertion that no complaints have been received about failure to provide access to a lawyer to persons detained in correction facilities or remand prisons. However, the Committee remains concerned, given some allegations that (a) the immediate notification of the relatives of persons placed in custody, and (b) access to a lawyer from the very outset of deprivation of liberty, are not always guaranteed in practice (arts. 17 and 22).

24. **The Committee recommends:**

(a) **That the State party guarantee that all persons deprived of liberty have access to a lawyer from the outset of deprivation of liberty and can communicate without delay with their relatives or any person of their choosing, and in the case of foreigners, with their consular authorities;**

(b) **That the State party guarantee in practice that any acts hindering the observance of these rights are adequately sanctioned.**

Training on the Convention

25. The Committee welcomes the information provided concerning the one-day international conference organized for various State actors and non-governmental organizations on the application of the Convention. Nevertheless, the Committee notes that no specific and regular training on the Convention is dispensed (art. 23).

26. **The Committee recommends that the State party ensure that all law enforcement personnel, whether civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty — including judges, prosecutors and other officials responsible for the administration of justice — receive appropriate and regular training on the provisions of the Convention, in conformity with article 23 of the Convention.**

Measures to provide reparation and to protect children from enforced disappearance (arts. 24-25)

Definition of victim

27. The Committee welcomes the amendments to article 28 of the Criminal Procedure Code, adopted on 1 March 2016, which expand the definition of victim. However, the Committee remains concerned that the definition of victim in national legislation does not fully conform to the broader definition contained in article 24 (1) of the Convention.

28. **The Committee encourages the State party to ensure that article 28 of the Criminal Procedure Code is applied in accordance with the definition of victim contained in article 24 (1) of the Convention in order to ensure the full enjoyment, by any individual who has suffered harm as the direct result of an enforced disappearance, of the rights set forth in the Convention, in particular the right to reparation.**

Right to receive reparation and prompt, fair and adequate compensation

29. The Committee notes the information provided by the State party on the system of reparation provided for in the Law on Compensation for Damage Caused by Violent Crimes, which provides for compensation from the Crime Victims' Fund Programme for material and/or non-material damage caused by violent crimes and compensation in advance for such damage. The Committee welcomes the clarification provided by the State party regarding the existence of two victim funds: the Crime Victims' Fund, which can be accessed by victims of violent crimes whose perpetrator may or may not be a State official and which can be accessed without a court judgment; and a second fund which can be accessed by victims of damage, whether criminal or civil, caused by the State, and can only be accessed with the existence of a court judgment. The Committee also welcomes the clarifications provided by the delegation during the dialogue in respect of the types of compensation available to victims and on the non-existence of a minimum and maximum amount for such compensation. The Committee notes the confirmation by the delegation during the dialogue that a person needs to have been granted victim status in order to be able to access these funds. The Committee remains concerned that national legislation does not contain a public system of comprehensive reparation that includes, besides compensation and rehabilitation of health, all the reparative measures provided for under article 24 (5) of the Convention, including for cases where the victim does not have medical or social insurance. The Committee is also concerned that the compensation provided for in the aforementioned law does not fully conform to the requirements contained in article 24 (4) of the Convention.

30. **The Committee encourages the State party to take the measures necessary to ensure that national law provides for a comprehensive, gender-sensitive system of reparation and compensation, which covers not only material and moral damage, but also other forms of reparation, such as restitution, rehabilitation, satisfaction, including restoration of dignity and reputation, and guarantees of non-repetition, in line with article 24 (4) and (5) of the Convention, for which the State is responsible and which is applicable even if no criminal proceedings have been initiated.**

Legal situation of disappeared persons and their relatives

31. The Committee welcomes the assertion of the State party that the recognition of a person whose whereabouts are not known or who is dead would not have an impact on the obligation of the State to carry out or continue an investigation into a crime of enforced disappearance until the fate of the person has been clarified. The Committee also welcomes

the clarification by the delegation during the dialogue that the minimum period of time before a person can be declared as missing is one year. However, the Committee remains concerned that national legislation does not fully address the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare (art. 24).

32. **The Committee encourages the State party to adopt the legislative measures necessary to guarantee that national law deals appropriately with the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights, in accordance with article 24 (6) of the Convention. In this respect, the Committee encourages the State party to set up a procedure for obtaining a declaration of absence as a result of enforced disappearance.**

D. Dissemination and follow-up

33. The Committee wishes to recall the obligations undertaken by States when ratifying the Convention and, in this connection, urges the State party to ensure that all the measures it adopts, irrespective of their nature or the authority from which they emanate, are in full accordance with the obligations it assumed when ratifying the Convention and other relevant international instruments. The Committee particularly urges the State party to ensure the effective investigation of all enforced disappearances and the full satisfaction of the rights of victims, as set forth in the Convention.

34. The Committee also wishes to emphasize the particularly cruel effect of enforced disappearances on the human rights of women and children. Women who are subjected to enforced disappearance are particularly vulnerable to sexual and other forms of gender violence. Women who are relatives of a disappeared person are particularly likely to suffer serious social and economic disadvantages and to be subjected to violence, persecution and reprisals as a result of their efforts to locate their loved ones. Children who are victims of enforced disappearance, either because they themselves were subjected to disappearance or because they suffer the consequences of the disappearance of their relatives, are especially vulnerable to numerous human rights violations, including identity substitution. In this context, the Committee places special emphasis on the need for the State party to ensure that gender perspectives and child-sensitive approaches are used in implementing the rights and obligations set out in the Convention.

35. The State party is encouraged to widely disseminate the Convention, its report submitted under article 29 (1) of the Convention, the written replies to the list of issues drawn up by the Committee and the present concluding observations, in order to raise awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the State party, and the general public. The Committee also encourages the State party to promote the participation of civil society, in particular organizations of relatives of victims, in the actions taken in line with the present concluding observations.

36. Noting that the State party submitted its core document in 1998 (HRI/CORE/1/Add.97), the Committee invites the State party to update it in accordance with the requirements for the common core document contained in the harmonized guidelines on reporting under the international human rights treaties (see HRI/GEN.2/Rev.6, chap. I).

37. In accordance with the Committee's rules of procedure, by 15 September 2018 at the latest, the State party should provide relevant information on its implementation of the Committee's recommendations as contained in paragraphs 22, 24 and 26.

38. Under article 29 (4) of the Convention, the Committee requests the State party to submit, no later than 15 September 2023, specific and updated information on the implementation of all its recommendations and any other new information on the fulfilment of the obligations contained in the Convention, in a document prepared in accordance with paragraph 39 of the guidelines on the form and content of reports under article 29 to be

submitted by States parties to the Convention (CED/C/2). The Committee encourages the State party to promote and facilitate the participation of civil society, in particular organizations of relatives of victims, in the preparation of this information.